U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 08 2010

SRC 08 089 54924

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Marie Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a physician - cardiology. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but found that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a medical degree from Madras Medical College. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director concluded that the petitioner works in an area of intrinsic merit, cardiology and we concur. Given that counsel and several of the references stress the merit of this field, we emphasize that the intrinsic merit of the field is only the first factor that must be considered. The director also did not contest that the proposed benefits of the petitioner's work, improved treatment of cardiac patients, would be national in scope. While we will also not contest this issue, it bears mention that simply working as a cardiologist would not meet the national scope requirement. *Matter of NYSDOT* states:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A)

> of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

22 I&N Dec. at 217, n.3.

While cardiac treatment as a whole serves the national interest, using the reasoning quoted above, the impact of a single cardiologist at the national level is negligible. Significantly, Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, such as by applying the waiver to all physicians practicing in a complicated specialty. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. The petitioner does not seek a waiver under this provision. Because Congress has made no further statutory changes in the decade since *NYSDOT*, we can presume that Congress has no further objection to the precedent decision.

Nevertheless, the petitioner is involved in ongoing clinical research that he publishes and presents at conferences. There is no evidence that he seeks to abandon his clinical research to work solely as a physician. Thus, we are satisfied that the proposed benefits of his research would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Counsel and several references discuss the complicated nature of cardiology and assert that the petitioner's ability to perform the complex duties of a cardiologist warrant a waiver of the job offer requirement in the national interest. The ultimate consequence of this argument, however, is a blanket waiver for all well trained cardiologists. It is the position of U.S. Citizenship and Immigration Services (USCIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

While we do not question the importance of a sufficient pool of well trained of cardiologists to health in the United States, eligibility for the waiver must rest with the alien's own qualifications

rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner completed a research fellowship in Neurology at the Kennedy Krieger Institute, Johns Hopkins University from 2001 through 2002, after which he joined the Rosalind Franklin University, Chicago Medical School where he remained as of the date of filing.

The petitioner submitted committee membership appointments, job appointments, professional certification, generic letters soliciting manuscripts from the petitioner that appear to be issued to any recent author in the field, routine work-related electronic mail messages that appear commensurate with the petitioner's position, correspondence expressing appreciation for past presentation, reprint requests, the petitioner's medical exam and training course scores and acceptance into a fellowship (residency) program. None of this evidence is indicative of a track record of success with some degree of influence on the field as a whole.

The petitioner also submitted his research grants, a presentation selected by the American Heart Association (AHA) for inclusion in the association's "The Best of Scientific Sessions 2007" satellite broadcast, a travel grant from the American College of Physicians, First Place in the 30th Annual Associates Clinical Vignette Competition, selection as one of the top five winners at the Chicago Medical Society's Poster Presentation Session and selection for the "Professionalism Award" for service to patients at Rosalind Franklin University of Medicine and Science where the petitioner is employed.

Research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and is not, by itself, indicative of with the investigators past influence in the field. The satellite broadcast, while increasing the petitioner's

exposure, is not necessarily indicative of his ultimate influence. The remaining distinctions appear limited to those just beginning their career or are local. Regardless, this evidence relates to one of the criteria for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(F), a classification that normally requires an approved alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria for a classification that normally requires an approved alien employment certification warrants a waiver of that requirement. *NYSDOT,* 22 I&N Dec. at 218.

In addition, the petitioner submitted his "professional" membership in the AHA, his membership in Sigma Xi and his "fellow in training" membership with the American College of Cardiology (ACC). Once again, this evidence falls under one of the eligibility criteria for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E). As this classification normally requires an approved alien employment application, we cannot conclude that evidence relating to two of those criteria, or even the requisite three required to demonstrate exceptional ability, warrants a waiver of the alien employment certification process in the national interest. *Id.*

[redacted], an assistant professor at Johns Hopkins University School of Medicine, asserts that the petitioner made significant contributions to the field of pediatric neurology. While [redacted] identifies the petitioner's neurology projects at Johns Hopkins, he does not provide the results of these projects or explain how they have impacted the field. While the petitioner presented this work, the record contains no evidence of the influence of these presentations. It does not appear that the petitioner published any articles on neurology. In discussing the petitioner's publications, [redacted] references the petitioner's more recent work in nephrology and cardiology.

The petitioner's supervisor at Rosalind Franklin University, [redacted], concludes only that the petitioner has potential. Specifically, he states that the petitioner "is headed for a position of great expertise and extraordinary contributions in the field of his practice, cardiology," and that he is "in line to become one of the premier cardiovascular specialist[s], both in this area and in the United States." [redacted] discusses the importance of the petitioner's field, cardiology, and the shortage of cardiologists in the United States. We have already acknowledged the substantial intrinsic merit of the petitioner's field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[redacted] further asserts that the petitioner's studies are important, but does not explain how they have already influenced the field of cardiology. Rather, he speculates that the petitioner's research "has a direct impact on the future of this field." Finally, [redacted] asserts that the petitioner performs "many of the complex clinical procedures in cardiology placing him amongst the very elite class of physician scientists." The fact that the petitioner, a trained cardiologist, can perform cardiology procedures that set him apart from other physicians in general, the majority of whom work within one of the other numerous medical specialties, is not an argument for waiving the alien employment certification process, which is designed to determine whether there are available qualified U.S. workers.

[redacted], an assistant professor of neurology at Harvard Medical School, purports to be an independent reference but his curriculum vitae reveals that his time at the Kennedy Krieger Institute overlapped with the petitioner's employment there. [redacted] discusses the importance of cardiology and the need for cardiologists in the United States. Once again, we do not contest this point. It would appear that these assertions pertain to any medical specialty. We are not persuaded that the petitioner's decision to work in one of the many complicated and important medical specialties that exist qualifies him for waiver of the alien employment certification process as stated above, it is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

[redacted] asserts that the petitioner is among the ten percent of cardiologists that can perform angiograms and while [redacted] concedes that the vast majority of cardiologists are able to utilize the standard EKG diagnostic technique, [redacted] whose specialty is neurology, asserts that the petitioner has mastered "numerous diagnostic modalities that less than one percent of cardiologists perform." [redacted] does not assert that the petitioner pioneered these techniques. The petitioner's training in techniques developed by others would appear amenable to enumeration on an application for alien employment certification. Regardless, [redacted] implication that the 99 percent of cardiologists are incapable of performing the diagnostic modalities in their specialties required to save lives (and are thus essentially unqualified to perform their jobs) warrants some objective supporting evidence such as a government report, which is conspicuously lacking in this case.

[redacted] further notes that the petitioner's articles have appeared in widely disseminated journals. We will not presume the significance of an article from the journal in which it appears. Rather, it is the petitioner's burden to demonstrate the significance of the individual article. [redacted] does not provide any examples of the petitioner's work being applied by independent cardiologists. Finally, [redacted] speculates as to the future significance of the petitioner's current projects. As these projects are still ongoing, they cannot serve as evidence of the petitioner's influence as of the date of filing, the date as of which he must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

[redacted] a physician at the Mayo Clinic, asserts that he was asked to review the petitioner's credentials and is basing his letter on this review and the petitioner's "stellar reputation in the field." [redacted] does not expressly state that he had ever heard of the petitioner or his work prior to being contacted for a reference letter. [redacted] discusses the importance of cardiology and the competitive nature of the medical school attended by the petitioner. This information is not relevant to whether or not the petitioner enjoys national or international acclaim in the field of cardiology. [redacted] asserts that the petitioner's influence can be seen by the petitioner's selection to teach students and resident trainees, give Journal Club presentations and grand round lectures at the institution where he is employed. While [redacted] asserts that only an expert cardiologist would be selected for these duties, the petitioner's supervisor, [redacted] does not suggest that these duties were uniquely assigned to the petitioner as opposed to being the routine duties of experienced physicians at the hospital. Regardless, the internal training of subordinates does not have

an impact which is national in scope. *NYSDOT* 22 I&N Dec. at 217, n.3. Finally, [redacted] asserts that the petitioner's national and international acclaim evidences the petitioner's widespread impact in the field. This statement is inherently circular and does not help demonstrate the petitioner's actual impact.

[redacted], an associate professor of clinical medicine at the Weill Medical College of Cornell University, does not explain how he came to know of the petitioner's work. [redacted] a specialist in nephrology, states that the petitioner is "one of the cardiologists specializing in coronary vascular disease (CVD), a subspecialty for which there is a tremendous need today." Once again, if [redacted] is implying that the majority of cardiologists are not trained to diagnose and treat CVD, which causes 25 million deaths annually according to [redacted] such an implication requires strong supporting evidence.

[redacted] asserts that cardiology is one of the most demanding subspecialties of internal medicine. We reiterate that the fact that there are numerous medical specialties such that every specialist has skills "most" physicians lack because they pursued other specialties is not persuasive. The appropriate comparison is with other cardiologists. [redacted] asserts that the petitioner's experience in nephrology distinguishes him from other cardiologists. This experience is "crucial," according to [redacted], because heart disease in kidney failure patients presents complex challenges that the petitioner, with his past experience in nephrology, can "seamlessly manage." [redacted] provides no examples of cardiology research that the petitioner was only able to complete based on his nephrology experience. Regardless, multidisciplinary training, while useful, cannot justify a waiver of the alien employment certification process. *Id.* at 221.

[redacted] discusses the petitioner's nephrology research on HIV nephropathy, the most common cause of end stage renal failure among patients with HIV. [redacted] explains that the petitioner demonstrated that anti-retroviral therapy leads to not only a slowing of the disease but also reverses the kidney damage that had already occurred. [redacted] asserts that the petitioner's results, which were published in 2005, have "international importance leading to a paradigm shift in the management of HIV associated nephropathy, a disease that affects millions of patients all over the world." While the petitioner submitted evidence that this work had been minimally cited as of the filing date, the citations are not at a level consistent with a "paradigm shift." Significantly, [redacted], who does not even expressly state that he knew of the petitioner's HIV associated nephropathy research prior to being contacted for a reference, does not assert that this disease is treated differently at the Weill Medical College based on the petitioner's publication.

The petitioner submitted his articles and presentations, evidence of minimal citation of individual articles by the petitioner and an article posted at *Diabetesincontrol.com* discussing the petitioner's recent presentation but concluding that "despite the researchers' enthusiasm, the results were suggestive rather than confirmatory." The petitioner also submitted the same article posted at *MedPage Today*. The number of citations is not consistent with contributions of major significance. Moreover, the citations themselves do not single out the petitioner's work as particularly significant. For example, the

review article on Renal Immunology and Pathology in *Current World Literature* cites the petitioner's work but does not notate it as "of special interest" or "of outstanding interest." In addition, an article in *AIDS* cites the petitioner's work as one of multiple articles for the proposition that "several observational cohort studies have demonstrated a decreased need for renal replacement therapy for patients treated with antiretroviral therapy." The other article cited for this proposition predates the petitioner's work. As another example, a 2006 article in *The American Journal of Medical Sciences* cites the petitioner's work as one of nine for the proposition that renal biopsy is recommended where feasible to determine the cause of renal disease in HIV positive patients. Finally, a letter to the editor in *Respiratory Medicine* cites the petitioner's work as one of four articles for the proposition that beta-agonists can provoke sudden death in asthmatics.

While the petitioner's research clearly has practical applications, it can be argued that any research, in order to be published or accepted for presentation, must offer new and useful information to the pool of knowledge. It does not follow that every researcher working with a grant producing publishable results inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

[redacted]